Supreme Court, U.S.
FILED

091010 FEB 16 2010

OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES

BOBBY LOUIS COLLARD,
Defendant-Appellant-Petitioner,

v.

STATE OF TEXAS,
Plaintiff-Appellee-Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS,
FIFTH DISTRICT OF TEXAS AT DALLAS

ORIGINAL PETITION FOR A WRIT OF CERTIORARI WITH APPENDIX A

BOBBY LOUIS COLLARD
1615 UNIVERSITY DRIVE
RICHARDSON, TEXAS 75081

Questions Presented

"Criminal case only" trial court

1. Does the trial court have subject matter jurisdiction?

2. Does the trial court have personal jurisdiction?

Statutory Challenge

3. Does Art. 25.04 violate Due Process?

Petition for a Writ of Certiorari

Collard petitions for a writ of certiorari to the Court of Appeals, Fifth District of Texas at Dallas, as follows:

Citations to decisions below

None.

Jurisdiction

(i) CCA "refused" review
27 Jan 2010 [+90: 27 Apr 2010].
No. PD-1761-09. [1]

(ii) Extension N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. §§ 1257(a) (final), 2101(c).

(v) Regarding Rule 29.4(c)
STATE is a party. All activity in STATE's courts.

No Oral Argument Requested

Oral argument is not expected to aid the resolution of these issues.

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[1] Collard filed simultaneous petitions for review. Tex. S. Ct. No. 09-1020 is still pending. The Court have requested a response by postcard(s) postmarked 14 December. Collard has received no copy of any response, at all, not even a Waiver.

Statement of the Case

When Federal Questions Were Raised

These are all filed in the trial court.

Notice of Waiver of Representation, via Special Appearance.

This is mentioned to confirm the Special Appearance. However, regarding Waiver, the transferor court viciously abused Collard, including refusing to file documents. *Rothgery* fallout? Maybe it's just Dallas County. Either way, the transferor court had ***no*** hesitation in compelling commerce ("You must get an attorney."). No doubt trial courts hear "everything." Collard ***was*** in the hospital for **heart surgery** when the court activity started.

The *sua sponte* transfer was a ***good*** idea.

Notice of Declining to Plea, via Special Appearance.

STATE never served any charging instrument. To this day, STATE has served no charging instrument. So, Collard has no Notice of any need to enter a plea. E.g., "Court: How do you plea?" "Collard: To what?"

Special Appearance and Motion to Dismiss. **SUBSTANTIVELY.**

Statutory Challenge. TEX. CRIM. PROC. CODE ANN. art. 25.04 allows STATE to give no Notice until trial.

This trial court is a "criminal case only" forum. Thus, failure of Notice isn't just a failure in personal jurisdiction; it's also a failure in subject matter jurisdiction. Without Notice, the case is a non-case; hence, civil.

Also raised is the failure of the condition

precedent of a commercial nexus. If we take the rumors about this case as true, there being no charging instrument served by which to confirm or deny them, STATE thinks there's a violation of TEX. PENAL CODE § 43.02 (West 2009). To address all possibilities, given the vacuum caused by the absence of Notice, STATE has to prove disjunctively (a) an offer, (b) an agreement, (c) particular conduct, or (d) a solicitation.

There was no such conduct, which eliminates (c).

As for (a), (b), [(c),] and (d), STATE has to prove (1) animation of the FEDERAL CAPACITY *and* (2) agreement to the choice of law of "this state." Collard has asserted from Day One (1) that he never animated the FEDERAL CAPACITY at any relevant time and (2) that there was never any agreement on any choice of law, especially that of "this state."

PROCEDURALLY.

A hearing date was set. Collard gave Notice. STATE never filed a response.

At the hearing, STATE went completely silent. No charging instrument; no evidence on any of (a), (b), (c), or (d); no evidence on (1) or (2).

The trial court prevented Collard from putting on his evidence and denied the Special Appearance and Motion to Dismiss viva voce. [2] Collard appealed.

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[2] The opinion mentions a "Docket Sheet entry." If a "Docket Sheet entry" rather than the Transcript of a viva voce ruling is what constitutes the relevant "order," then the trial courts need to be serving copies of those "Docket Sheet entries." Otherwise, we're dealing with "secret" orders. *Cf. Ballard v. Comm'r*, 544 U.S. 40 (2005). The trial court has never served any "Docket Sheet entry." In that same Transcript ***is*** permission to appeal, but that shouldn't matter, here *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(7) (West 1997 & Supp. 2008).

Special Appearance and Motion to Show Authority.

The hearing was to include this motion, too. Again, STATE filed no written response and went completely silent. There is no discernable ruling on this motion.

Argument

"Criminal case only" trial court

1. Does the trial court have subject matter jurisdiction?

"When."

"When" does a non-case become a "criminal" case? "When" does STATE have to prove standing? an indispensable commercial nexus? May STATE benefit by going silent to Collard's Special Appearance and Motion to Dismiss?

STATE must prove its "actual grievance." *Tex. Dept. of Trans. v. City of Sunset Valley*, 146 S.W.3d 637, 646 (Tex. 2004) (part V.A.) (standing requires "actual grievance"); *Tex. Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217 (Tex. 2004) (jurisdiction is question of law).

Civil jurisdiction is inherent. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). Criminal jurisdiction must be proved. *Cf. United States v. United Mine Workers of America*, 330 U.S. 258 (1947) (*civil* jurisdiction is inherent; *criminal* jurisdiction must be proved).

On this Record, STATE has no standing.

2. **Does the trial court have personal jurisdiction?**

STATE has never served Notice. *Cf. Smith v. O'Grady*, 312 U.S. 329 (1941); *Lloyd v. Alexander*, 5 U.S. (1 Cranch) 365, 366 (1803) ("A citation not served is as no citation.").

For the "criminal case only" forum, since "no Notice" means (A) "non-case," i.e., ***civil***, "no Notice" also means (B) "no subject matter jurisdiction."

Statutory Challenge

3. **Does Art. 25.04 violate Due Process?**

The Statute.

> In misdemeanors, it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible.

TEX. CRIM. PROC. CODE ANN. art. 25.04. *See also* Art. 25.03 (same concept for felony cases).

Burden shifting.

This statute relieves STATE of its duty to provide meaningful Notice. Sure, a defendant may *waive* Notice. But that's the *defendant's* option, not STATE's (via its legislature). The mere concept of waiver fully recognizes STATE's threshold duty to provide Notice at a meaningful time in a meaningful manner. To compel a defendant to *demand* Notice is to shift completely the Due Process burden. *Cf.*

Mullaney v. Wilbur, 421 U.S. 684 (1975); *In re Winship*, 397 U.S. 358 (1970); *Connecticut v. Johnson*, 460 U.S. 73 (1983) (instruction amounted to directed verdict of guilt relieving State of its burden).

Systemic secrecy

STATE's legislature and judiciary allow, even encourage, its executive to prosecute without Notice. STATE's judiciary further aid and abet by (A) recognizing "secret" "orders" while (B) demanding written orders ***despite*** the Transcript.

Is ***this*** what Utah beach in Normandy was about?

Remedies and Relief Requested

Collard requests that this Court grant the petition, vacate the appellate opinion/judgment, declare Art. 25.04 void for violation of Due Process, and remand this case to the "criminal case only" trial court with instructions to grant Collard's Special Appearance and Motion to Dismiss.

Collard further requests the opportunity to brief any (additional) issues the Court may identify, the non-argument calendar, costs, and any and all other relief at law, in equity, or sui generis to which he may show himself justly entitled.

Respectfully submitted,

/s/ Bobby Collard
Bobby Louis Collard

Appendix A
Table of Contents

Rule 14.1(i)(i)– Appellate Opinion and Judgment..... A-1

2009 Nov 10—Appellate Opinion A-1

2009 Nov 10—Judgment..... A-3

Rule 14.1(i)(ii)—Additional Orders..... A-4

Court of Criminal Appeals..... A-4
2010 Jan 27 – CCA refuses petition..... A-4

County Criminal Court No. 6 ..... A-5
2009 Sep 14 – Transcript of Hearing..... A-5

Rule 14.1(i)(iii)—Rehearing, or other extension A-9

None..... A-9

Rule 14.1(i)(iv)—Judgment of different date A-9

None..... A-9

Rule 14.1(i)(v)—Statutes and Rules A-9

Included in Question 3..... A-9

Rule 14.1(i)(vi)—Additional Essential Materials... A-9

Absences include the following:..... A-9

Appendix A

Rule 14.1(i)(i)—Appellate Opinion and Judgment

2009 Nov 10—Appellate Opinion

DISMISS; Opinion issued November 10, 2009

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-09-01120-CR

BOBBY COLLARD, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the
County Criminal Court No. 6
Dallas County, Texas
Trial Court Cause No. MBO8-66267-G

MEMORANDUM OPINION

Before Chief Justice Wright and
Justices Francis and Murphy

Bobby Collard is charged by information with prostitution. *See* TEX. PENAL CODE ANN. § 43.02(a)(2) (Vernon). Appellant filed a pretrial "special appearance and first motion to dismiss" challenging the trial court's jurisdiction over the case. There is no written order ruling on the motion, but there is a

docket sheet entry that states "Court ruled it does have jurisdiction over this matter and this defendant." Appellant filed a notice of appeal from the trial court's denial of the special appearance and motion to dismiss. For the reasons that follow, we conclude we have no jurisdiction over the appeal.

As a general rule, an appellate court may consider appeals by criminal defendants only after conviction. *Wright v. State*, 969 S.W.2d 588, 589 (Tex. App.—Dallas 1998, no pet.). Intermediate [1 2] appellate courts have no jurisdiction to review interlocutory orders absent express authority. *Ex parte Apolinar*, 820 S.W.2d 792, 794 (Tex. Crim. App. 1991); *Wright*, 969 S.W.2d at 589. Moreover, a court of appeals has no jurisdiction over an appeal absent a written judgment or order. *See Nikrasch v. State*, 698 S.W.2d 443, 450 (Tex. App—Dallas 1985, no pet).

In this case, not only is there no written order ruling on appellant's motion, the complained of ruling is not challengeable by interlocutory appeal. *See Nikrasch*, 698 S.W.2d at 450 (written order requirement); *Wright*, 969 S.W.2d at 589 (types of appealable interlocutory orders). Absent a judgment of conviction or other appealable order, we have no jurisdiction over the appeal.

We dismiss the appeal for want of jurisdiction.

PER CURIAM

Do Not Publish
TEX. R. APP. P. 47
091120F.U05

2009 Nov 10--Judgment

(Seal of THE STATE OF TEXAS)

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

BOBBY COLLARD, Appellant	Appeal from the County Criminal Court No. 6 of Dallas County, Texas.
NO. 05-09-01120-CR V.	(Tr.Ct.No. MB08-66267-G).
THE STATE OF TEXAS, Appellee	Opinion delivered per curiam before Chief Justice Wright and Justices Francis and Murphy.

Based on the Court's opinion of this date, we **DISMISS** the appeal for want of jurisdiction.

Judgment entered November 10, 2009.

/s/ Carolyn Wright
CAROLYN WRIGHT
CHIEF JUSTICE

Rule 14.1(i)(ii)—Additional Orders

Court of Criminal Appeals

2010 Jan 27 – CCA refuses petition

[Watermark SEAL of THE STATE OF TEXAS]

OFFICIAL NOTICE FROM
COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION,
AUSTIN, TEXAS 78711

Wednesday, January 27, 2010
RE: Case No. PD-1761-09
COA#: 05-09-01120-CR
STYLE: COLLARD, BOBBY LOUIS

On this day, the Appellant's Pro Se petition for discretionary review has been refused.

Louise Pearson, Clerk

BOBBY COLLARD
1615 UNIVERSITY DR
RICHARDSON TX 75081

[Pitney Bowes meter mark:
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MAILED FROM ZIP CODE 78701]

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[4]

THE COURT: On the record. This is Cause Number MB08-66267-G, styled the State of Texas versus Bobby Louis Collard. Are both sides ready to proceed?

MS. BEATTY: State is ready, Your Honor.

MR. COLLARD: Yes, ma'am.

THE COURT: You are ready?

MR. COLLARD: Haven't I already did the same thing here on one of my motions?

THE COURT: That's the form that I want you to sign for me. But we need to -- that's if you're intending to represent yourself because I need to know that you understand everything that, you know, you're giving up.

So are you intending to represent yourself?

MR. COLLARD: Yes, ma'am.

THE COURT: Okay. Could you sign that form, and I'll put it in the Court's jacket so we have it. And then you have in your motion --

First off, I'm doing this on the record, even though I already asked you that -- I'll just go down the list. "Assertion of Rights." At this point, you haven't given up any rights.

"Special Appearance," "objecting to the court's subject matter jurisdiction, personal jurisdiction, and venue." At this point, I'm going to overrule that and

deny that part of your motion. If you wish to appeal that, we do have a

[5]

presiding judge, and we also have an administrative judge that you can appeal that decision to. But at this point, the Court believes that they have jurisdiction.

MR. COLLARD: You're overruling what now?

THE COURT: The special appearance section of your motion that says, "Collard asserts his special appearance, objecting to the court's subject matter jurisdiction, personal jurisdiction, and venue." At this point, the Court believes they do have jurisdiction of this matter.

Then "Objection to Non-judicial Decision-making." From what I understand that to mean is that you are waiving your right to a jury trial. You do not wish to have this matter heard by a jury of six of your peers; is that correct?

MR. COLLARD: No, ma'am. Which page are you on?

THE COURT: I'm still on page one.

MR. COLLARD: On page one still. Okay. Would you read that again, please?

THE COURT: "Objection to Non-judicial Decision-making."

MR. COLLARD: Okay. No, ma'am. I want a jury.

THE COURT: You do want a jury?

MR. COLLARD: A jury trial, yes, ma'am.

THE COURT: Okay. So what does this part of your motion mean?

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[10]

THE COURT: Okay. So do you have an attorney?

MR. COLLARD: No, ma'am.

THE COURT: Because --

MR. COLLARD: So you're saying that either I have to get an attorney

THE COURT: You have to get an attorney or you have to sign that sheet of paper letting me know that you want to proceed without an attorney, and that you understand all the rights that you are giving up by not having an attorney.

MR. COLLARD: Well, what does that have to do with special appearance? Maybe I'm missing something.

THE COURT: Maybe I'm missing something. Because what is your special appearance saying, that you want to appear on behalf of yourself?

MR. COLLARD: There's always surprises. I don't really know what to do because it's my understanding that on this special appearance, that these -- that if it is denied, that I can appeal special appearance.

THE COURT: Okay, okay. I'll let you go do that. I really can't --

MR. COLLARD: There are issues here that I'm trying to get across in my motion, and I don't believe that procedure was followed. In other words, there

are certain things that I didn't do that I'm being accused of.

THE COURT: But you're putting the carriage

[11]

before the horse because you've got to get to the part of who is going to appear and argue on your behalf before you ever get to whether or not you are guilty of this.

MR. COLLARD: But the Court has to have standing to do this; is that not correct?

THE COURT: That's correct. And I already ruled that the Court believes that they have jurisdiction over this matter. And I said that if you don't agree with that, then you can appeal that.

MR. COLLARD: Yeah, I don't agree with that. That's correct.

THE COURT: Okay. All right. I'm going to allow you to appeal it.

MR. COLLARD: Okay.

THE COURT: That concludes this hearing.

MR. COLLARD: Beg your pardon?

THE COURT: That concludes this hearing.

MR. COLLARD: I'm sorry, I didn't hear you.

THE COURT: That concludes this hearing.

MR. COLLARD: Could I testify, be sworn in to testify?

THE COURT: You don't believe I have jurisdiction. You want to appeal that decision. There

is nothing else for me to consider. I'm going to let the next highest level of Court decide whether or not I have [⊥ 12] jurisdiction.

Trisha L. Phillips, Official Court Reporter
(214) 653-5656

Rule 14.1(i)(iii)—Rehearing, or other extension

None

Rule 14.1(i)(iv)—Judgment of different date

None

Rule 14.1(i)(v)—Statutes and Rules

Included in Question 3.

Rule 14.1(i)(vi)—Additional Essential Materials

Absences include the following:

No Return of Service
No Service of any "Docket Sheet entry"
No response or evidence by STATE